

In the United States Court of Federal Claims

No. 01-495C

(Filed: September 17, 2010)

KENT CHRISTOFFERSON, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER DIRECTING ENTRY OF JUDGMENT

BRUGGINK, *Judge.*

This action for unpaid overtime is before the court for review and approval of the parties' stipulation for the entry of judgment. The signed settlement was appended to the joint status report filed September 7, 2010, and is attached to this order as well.¹

This case was commenced in August 2001 by four named individuals on behalf of themselves and other former workers for the United States Bureau of the Census. The claim was for unpaid overtime pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (2006), and the Federal Employee Pay Act, 5 U.S.C. §§ 5541-50a (2006). Between 2001 and 2006, thousands of plaintiffs opted into the suit in a series of uncontested motions. Eventually, the statute of limitations effectively foreclosed the addition of any new plaintiffs. *See Christofferson v. United States*, 72 Fed. Cl. 541 (2005); *Christofferson v. United States*, 64 Fed. Cl. 316 (2006) ("*Christofferson I*").

¹ The list of eligible plaintiffs appended to the stipulation that is attached to this order is a corrected version of the list filed on September 7, 2010.

During the course of this litigation, the court has issued various orders and rulings affecting the eligibility of various groups of claimants. These orders disallowed the claims of some plaintiffs and permitted those of others. For example, the court granted summary judgment against the claims of employees who worked in excess of eight hours in a day, but not more than forty hours in a week. *Christofferson I*. In contrast, after a trial, the court concluded that Field Operations Supervisors at the Concord, California field office were entitled to claim overtime. *Christofferson v. United States*, 67 Fed. Cl. 68 (2005). Additionally, the court denied claims for tolling the statute of limitations, *Christofferson v. United States*, 72 Fed. Cl. 541 (2006), and denied the plaintiffs' motion to amend the complaint to permit recovery for "straight time" hours. *Christofferson v. United States*, 77 Fed. Cl. 361 (2007).

Through the parties' cooperative evaluation of the claims, dozens of individual plaintiffs have settled and received payment. In addition, this process developed agreed-upon efforts to obtain details of the nature and extent of the overtime claimed and has identified large numbers of persons who have not responded to such efforts. Specifically, in 2005–06, the parties developed a "Memorandum of Understanding," which set out a process by which claimants would submit claims forms allowing counsel to test a claimant's continuing interest in the litigation and to compare the claims with this court's orders limiting or allowing recovery. Of the more than 7,000 plaintiffs, more than 2,000 submitted claims forms.

On April 15, 2009, the court directed a final notice to be sent to those non-responding individuals instructing them that the failure to timely submit a completed claims form would result in the dismissal of their claims. Of those who received this final notice, only 529 persons responded indicating that they wished to proceed as part of the litigation. Subsequently, the parties entered into a mediation process and reached a tentative settlement. In an order dated March 8, 2010, we held that those entitled to participate in the settlement are the former employees of the United States Bureau of the Census who worked during the 2000 Census, who have opted into the proceeding by submitting timely claims sufficient under the court's prior rulings, and who have not previously settled or been dismissed. Those who do not meet these criteria are ineligible to recover.

In order to conclusively and fairly determine those claimants who are eligible to participate in the settlement, we ordered plaintiffs' attorney to distribute a "Notice of Ineligibility" to all the claimants who counsel had reason to believe were ineligible to recover. The Notice gave recipients the

opportunity to provide documentary evidence of their eligibility. Forty-three people objected, two of whom counsel determined were indeed eligible under prior court rulings. We subsequently directed plaintiffs' counsel to file with the court a list of those persons who were ineligible for any reason. On August 17, 2010, we ordered the dismissal of 5,275 plaintiffs designated as ineligible. On September 7, 2010, the parties filed with the court an executed stipulation for the entry of judgment for the court's review and approval.

Neither the Rules of the Court of Federal Claims, the FLSA, nor the FEPA mandate court review of a settlement leading to a stipulation for judgment. Various cases, however, suggest the wisdom of this step. *See, e.g., Hohnke v. United States*, 69 Fed. Cl. 170 (2005) (suggesting that settlements of FLSA cases should be reviewed by the court). The point of such review is to insure that an FLSA settlement resolves a bona fide factual dispute over hours worked or amount due and is not simply a waiver of the employees' rights and claims. *Id.* at 175 (citing *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945); *D.A. Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946)). Such a bona fide dispute may be resolved through settlement if plaintiffs actually bring a lawsuit under the FLSA and the subsequent settlement is scrutinized by the court for fairness. *Id.* at 179 (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352 (11th Cir. 1982)).

Here, the factual and procedural background recited above, along with the multiple previously published decisions and a trial, make sufficiently clear the existence of a bona fide dispute. Furthermore, this settlement—reached after protracted litigation, extensive investigation, and arm's length negotiation—reflects a fair disposition of plaintiffs' claims. Having examined the terms of this settlement, we find it to be a just and equitable resolution to the remaining claims in this matter. We therefore conclude that the attached settlement agreement warrants approval. Because the settlement is “global” in nature, *i.e.* inclusive of distribution and administration costs and the extensive attorney's fees and costs incurred over nearly a decade of litigation, and because all plaintiffs ineligible to recover have previously been dismissed, there remain no further matters preventing the entry of judgment. Accordingly, the Clerk is hereby directed to enter judgment pursuant to the attached stipulation. No costs.

s/Eric G. Bruggink
ERIC G. BRUGGINK
Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

KENT CHRISTOFFERSON <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 01-495C
)	(Judge Bruggink)
THE UNITED STATES,)	
)	
Defendant.)	

STIPULATION FOR THE ENTRY OF JUDGMENT

This case arises out of plaintiffs' claims that, while employed by the United States Census Bureau ("Bureau"), the Bureau failed to pay them overtime compensation pursuant to 29 U.S.C. § 201 et seq. (The Fair Labor Standards Act). In August 2001, certain plaintiffs filed a complaint in this Court to address those claims ("named plaintiffs"). Thereafter, others joined this suit ("Opt-Ins"). This stipulation concerns only the claims of the named plaintiffs and Opt-Ins listed in Attachment A (collectively, "plaintiffs").

Ultimately, the parties entered into negotiations designed to amicably resolve their dispute, upon the terms set forth below. Plaintiffs' offer has been accepted on behalf of the Attorney General. Accordingly, without the necessity of a trial on the merits or adjudication of any issue of fact or law pertaining to the complaint, and without constituting an admission of liability on the part of the United States, and for no other purpose, plaintiffs and defendant stipulate to the entry of judgment upon the following terms.

1. Settlement Amount. Within ten days after this stipulation has been ordered by the Court, plaintiffs' counsel will cause to be created a Qualified Settlement Fund ("QSF") with a unique taxpayer identification and will provide wiring instructions for this account to defendant. Defendant shall pay promptly to the QSF the lump sum of \$7,750,000 ("Settlement Amount"), to be distributed by plaintiffs' counsel in accordance with paragraphs 2, 3 and 4, below.

2. Settlement Shares to Plaintiffs. Of the Settlement Amount, the individual plaintiffs, listed on Exhibit A attached hereto, shall be paid a total of \$3,505,124.00, pursuant to a payout formula devised by plaintiffs' counsel. Each payment shall be considered as 50 percent

back pay and 50 percent as liquidated damages.

3. Attorney Fees, Expenses and Costs. From the Settlement Amount, plaintiffs' counsel shall be paid \$4,169,876 in attorney fees, expenses and out-of-pocket costs. From the settlement amount, plaintiffs' attorneys also will be paid \$75,000 to hire a third-party contractor to distribute the Settlement Amount pursuant to this stipulation. Plaintiffs' counsel shall manage the third-party contractor, for whose efforts plaintiffs alone will be responsible.

4. Miscellaneous Conditions Concerning Payment.

a. Miscellaneous Income Forms. Plaintiffs' counsel shall be responsible for issuing a Miscellaneous Income Form 1099 to each plaintiff and to the Internal Revenue Service reflecting the amounts received under this Stipulation.

b. Distribution Cost. Other than the amounts specified in paragraph 2, above, the United States will not bear any of the cost of distributing payments to individual plaintiffs, which shall be the sole responsibility of Minami Tamaki LLP.

5. Release. Except for plaintiffs' right to enforce the terms of this stipulation. Plaintiffs release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents and employees arising out of their employment with the Bureau for the Year 2000 Census.

6. Warranty. Plaintiffs warrant and represent that no other action or suit with respect to the claims advanced in this suit for the time period covered by this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. Plaintiffs further warrant and represent that they have made no assignment or transfer of all or any part of their rights arising out of or relating to the claims advanced in this suit. Should a plaintiff now or in the future violate these warranties and representations, plaintiff shall refund any amount paid by the United States pursuant to this stipulation, together with interest thereon, in accordance with the formula prescribed under 5 U.S.C. § 5596(b)(2)(A) and by the Office of Personnel Management in FPM letter 550-78, computed from the date the United States makes the

payments provided for in this stipulation.

7. Taxes. Except for plaintiffs' counsel's obligation to provide each plaintiff with a Miscellaneous Income Form 1099, this stipulation is in no way related to or concerned with income or other taxes for which plaintiffs are liable, or may become liable in the future as a result of this stipulation.

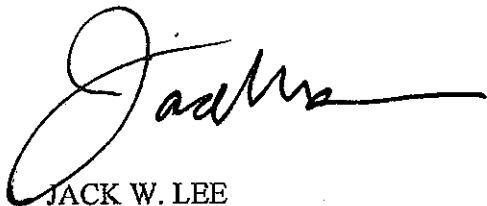
8. Other Proceedings. This stipulation is for the purpose of settling the claims raised in the complaint, and for no other purpose. Accordingly, this stipulation shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of this stipulation.

9. Authority of Counsel. Plaintiffs' attorney of record represents that he is authorized to enter into this stipulation on behalf of plaintiffs. Defendant's attorney of record represents that the undersigned attorneys for the United States are authorized to execute this stipulation on behalf of the United States.

Respectfully submitted,

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Date: 9/7/2010



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EXHIBIT A
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Abernethy, Suzanne M.
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Acosta, Emma A.
Acosta, John
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Adams, Karen D.
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Adams, Undrae P.
Adkins, Tanisha E.
Afek, Dina
Agnant, Eddy E.
Agron, Brad M.
Aguero, Emilio
Aguilar, Esther
Aguilar, Juanita
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Aikens, Marvin S.
Akins, Janice L.
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Aldridge, Freda C.
Aleem, Saleem
Alexandr, Victor
Ali, Saleema N.
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Allen, Angenetta L.
Allen, Carole E.
Allred, Jennifer L.
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Alvarado, Edmund V.
Alvarado, Rod A.
Alvarez, Christine A.
Alyea, Kathryn A.
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Amerson, Karen J.
Amerson, Vincent L.

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Anderson, Henrietta
Anderson, Holly F.
Anderson, Jeanne K.
Anderson, Kathleen J.
Anderson, Lashawn Y.
Anderson, Norbert E.
Andrade, Bibiana C.
Andrews Jr., Napoleon
Andrews, Lavonne R.
Angeletti, Irma J.
Ansaknok, Belva
Anthony, Wren E.
Antreasyan, Hrant
Appelo, Regan M.
Applegate, Eddie
Aquino, Lydia G.
Arellano, Janet
Arellano, Victor M.
Armwood, Hope F.
Arnold, Trilby J.
Atkins, Ronald C.
Aubry, Phyllis
Auguste, Harry
Augustowicz, Jean
Auh, Yoon T.
Austin, Carole
Austin, Corliss T.
Austin, Robin
Avalos, Carlos A.
Avila, Tina M.
Awotunde, Gabriel
Axline, Robyn M.
Aybar, Mary
Aziz, Ilahna
Azuma, Jane
Bahena, Elena Y.
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Bail, Martha R.
Bains, Rushpal
Baker, Edgar
Baker, Gerald S.
Baker, Sandra M.
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Ballard, Caro B.
Banks, Diane
Barba Finocchi, Constance J.

Barbecho, Evismenia
Barclay, Carla C.
Barclay, Tanelya L.
Barco, Barney M.
Barco, Joan B.
Barfield, Delphine
Barker, Betty J.
Barker, Christopher
Barnes, Alvena A.
Barnes, Donald
Barnes, Donald L.
Barnes, Timothy T.
Baron, Jerry
Barragan, Cesar F.
Basco, Ismael T.
Baskin, David B.
Basoff, Shari L.
Bates, Ann
Batt, Betsy
Battey, Michelle R.
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Batts, Kashima D.
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Bautista, Veronica
Bayley, Laura J.
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Becker, Robert J.
Beckman, Jill A.
Bedford, Phyllis
Bednarz, Sharon K.
Begrift, Scott P.
Behrman, Jessica A.
Bell, Anita
Bell, Bill
Bell, Felix
Bell, Linda A.
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Bennett, Tiara
Beondo, Eugenia
Beranek, Joseph E.
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Broadwater, Robert L.
Brooks, Donna M.
Brooks, Freeman L.
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Brooks, Tulisha M.
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Brown, Glenda
Brown, Lenore S.
Brown, Nancy A.
Brown, Peggy M.
Brown, Perry
Brown, Philip R.
Brown, Rosa H.
Brown, Teaira
Brown, Tracy
Brown, Travis L.
Browner, Shera
Bruntrop, Robert
Bryant, Alfred L.
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Bryer, Kenneth J.
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Cerna, Hamilton F.
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Chau, Mabel
Chea, Phanna
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Cotton, Ronnie
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Craft-Jaggers, Janet
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Crayton, Christi L.
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Cristia, Klara
Cross, Regina
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Crowe, Jeannie S.
Crowe, Josie L.
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Decristoforo, Mario L.
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Dejean, Carmelle
Dejesus, Julissa
Dekoszmovszky, Peter
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Dent, Michael A.
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Dispensa, Harry R.
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Dougharty, Barbara J.
Dougharty, Jason C.
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Douglas, Thea M.
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Dowell, Georgina L.
Downes, Lisa Yvette
Downin, Rosemarie J.
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Doyle, Richard A.
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Dubbe, Elizabeth I.
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Duncan, Jo A.
Dunn, Victoria V.
Dunnam, Stephanie L.
Duran, Steve R.
Dutch, Travis L.
Dyson, Laurretta
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Eckstrom, Carl J.
Edmond, Janice T.
Edmondson, Robert L.
Edwards, Diedra
Edwards, Gail L.
Edwards, Gloria R.
Edwards, Jody L.
Edwards, Patricia
Efstathiou, John
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Ewing, Bert K.
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Fahie, Evelyn D.
Fahs, Becky E.
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Faison, Krystal R.
Falconi, Victor E.
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Farrelly, Patrick
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Finucane, Richard F.
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Fox-Farwell, Lisa
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Franklin, Ronette F.

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Frazier, Gary L.
Frazier, Tawanda
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Freeman, Clyde J.
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Froehlich, Eldon E.
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Furlan, Jose A.
Fusaro, Peter A.
Fuss, Nina J.
Galan, Yvette
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Garner Jr, Wright
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Gee, Vanyoska
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George, Theresa E.
Gerasta, Letisia B.
Gericke, Otto L.
Gerres, Barbara E.

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Gibson, Kathleen E.
Gilbert, Jeffrey
Gilbert, Vivian R.
Gillespie, Gerard
Gillespie, Julia
Glaser, Michael R.
Glennon, William
Glover, Patricia
Golden, Norman S.
Gomez, Charles G.
Gomez, Leane E.
Gomez, Trudy A.
Gomez-Carr, Caroline M.
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Gonzalez, Eva
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Shamilyan, Zakhar Z.
Sharif, Denise V.
Sharples, Marilyn
Shatela, Redwan A.
Shaw, Martha
Shea, Sean O.
Shea, Susan D.
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Shelton, Judy E.
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Shepherd, Cherylle A.
Sheppard, Danette
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Shewey, Jeannie L.
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Shugart, Janet
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Siemons, Carol A.
Silva, Leilan L.
Silver, Jean E.
Simmons, Donald W.
Simmons, Marlene
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Simon, Linda G.
Simon, Stephen J.
Simonson, Tamber L.
Simpson, Robert L.
Sims Jr., James L.
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Sims, Kiana S.
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Skibbens, Charles P.
Skutsch, Thomas W.
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Slatius, Edmond
Sloan, Sheila
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Sloyan, Jane M.
Smart, Ashley
Smith, Alexis
Smith, Anita R.
Smith, Bobby
Smith, Bradley G.
Smith, Bruce
Smith, Carla
Smith, Cinderella
Smith, Ciuleandra J.
Smith, Clarence J.
Smith, Damien D.
Smith, Jeffrey T.
Smith, Kelly J.
Smith, Kim N.
Smith, Melvin D.

Smith, Sandy
Smith, Shelia
Smith, Stacey
Smith, Tracey K.
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Snell, Tyrone E.
Solomon, Denise A.
Sommer, Donna L.
Sommer, Linda
Somoza, Julio G.
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Soriano, Roslyn X.
Sosna, Larry D.
Soto, Maritza
Soto, Victor
Spaulding, John
Spear, Patricia
Spears, James
Spencer, Lyriss E.
Spina, Salvatore
Spradlin, Esther L.
Sprague, Ronald K.
Spratt, Andrew B.
Springer, Pleschette A.
Springman, John K.
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St. Louis, Jason E.
Stagg, Vivian L.
Stallworthwilli, Deborah A.
Stalmack, Karen A.
Stanfill, Charles R.
Stanley, Carolyn A.
Stanley, Vera N.
Stanzione, Suzanne E.
Starke, John D.
Starks, Evangeline W.
Statdfield, Shirley
Stecker, James H.
Steele, Lark L.
Steele, Rena
Stefen, Only One Name
Stenger, Margaret A.
Stephan, Linda M.
Stephens, Cheryl C.
Sternbach, Margaret T.
Stevenson, John S.
Stewart, Annette J.
Stewart, Frances

Stewart, Laurita
Stewart, Margaret A.
Stewart, Teresa A.
Still, Tracy
Stimson, Betty K.
Stith, James N.
Stoddard, William J.
Stogden, Kelly
Stone, Dan N.
Stone, Donald S.
Stone, Rosiland
Stowell, Hannelori A.
Stowell, Richard K.
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Strauss, Carolyn J.
Stripling, Pamela E.
Strong, Cheryl
Strong, Emberley A.
Stuart, George M.
Stucker, Mary N.
Stupin, Christine M.
Sturdivant, Gwendolyn P.
Suarez, Enrique
Suber, Elaine E.
Subia, Lori
Sudden, Richard S.
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Sumner, Thomas A.
Sumpter, Juanita
Sundblom, Dana L.
Surin, Caroline A.
Suryk, Richard
Sutherland, Marcia G.
Sutton, Lynda
Swavely, Reginald J.
Swidecki, Amy
Swidecki, Carrie
Swidecki, Jamie B.
Swidecki, Linda
Swift, Karyna M.
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Taffe, Thomas
Tammons, Herbert H.
Tandy, Jim
Tants, Theresa M.
Taquino, Edith S.
Tarr, John B.
Tasso, Sonia

Tauss, Frank J.
Taylor, Lloyd M.
Taylor, Lyle O.
Taylor, Roderick W.
Tello, Liliana
Temple, Sheila M.
Tenen, Gilbert Bruce
Terracina, Stephen J.
Terrel, Lorna Y.
Terry, Regina
Testani, Teresa M.
Tewes, Dale A.
Tham, Yen
Thomas, Diane
Thomas, Fannie
Thomas, Sandra
Thomas, Shelby K.
Thomas, Valerie R.
Thomas, Yvette P.
Thompson Jr, Bobby E.
Thompson, Audrey J.
Thompson, Ethel V.
Thompson, Robert S.
Thompson, Tawn N.
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Tinjum, Jens R.
Tobias, Benjamin H.
Tomlin, Mary L.
Toomoth, Fredrick E.
Torres, Violet D.
Torrez, Monica D.
Tourette, Charles G.
Toyota, Kevin H.
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Tracy, Anne W.
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Travertini, Linda A.
Traylor, Kathleen S.
Trejo, Fidel
Triplett, Beth A.
Trujillo, Ray
Tucker, Hugh
Tullis, Elizabeth M.
Turner, Artavior
Turner, Debra L.
Turner, Leslie
Tyson, Jontae R.
Tyson, Paul A.

Ude, Dona
Uglowook, Sharon O.
Underwood, Gloria W.
Urias, Angela D.
Uwumarogie, Portia
Vaag, Lynn
Valencia, Pedro J.
Valenzuela, Alicia M.
Van Beek, Carol
Van Brunt, Anna Maria F.
Van Dyke, Robert J.
Van Eck, Harold F.
Van Iwarden, Tammy
Van Tichelt, Brett
Vanschoor, Liz A.
Vasquez, Sonya M.
Vatter, Robert S.
Vay, Michele
Vazquez, Helen W.
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Velasquez, Cruz
Velez, Jaime A.
Venegas, Carlos P.
Vera, Luis X.
Vera, Raiza F.
Verbrugghen, Susan A.
Verdiner, Miriam
Verdun, Regina
Vickson, David W.
Viers, Paul B.
Vigil, Cynthia I.
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Villegas, Gunter
Villero, Monna
Vinson, Patsy L.
Violin, Roxy R.
Voelsing, Delia
Vogel, Edward F.
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Waguespack, Sharon M.
Wahl, Bruce E.
Walker, Ethel L.
Walker, Gary L.
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Walker, Sheryl D.

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Walton, Kirk D.
Waltrip, Michele R.
Ward, Linda A.
Ward, Marilyn N.
Ware, Gwendolyn H.
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Warner, Shelly A.
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Watahomigie, Angelita
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Weatherbee, Frances G.
Weatherton, Damali
Webb, Floyd A.
Webb, Karen A.
Webb, Margaret A.
Webb, Maxine
Weber, Christine T.
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Weinberger, Roy
Weisse, Timothy M.
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Weitz, Marvin
Welch, Benjamin R.
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Welton, Wanda M.
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Wencel, Jan K.
Weng, Hsieh Y.
Weng, Lin-Chieh
Wenrick, William W.
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West, Sharon Y.
West, Veronica D.

West-Myers, Dona L.
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Wheatley, Joseph K.
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Whitbourne, David P.
White, Antoinette L.
White, Charlene
Whitehead, Frank N.
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Wiley, Casaundra
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Wilkerson, Harold L.
Wilkerson, Mary L.
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Wilkinson, Eileen
Willens, Dana E.
Williams, Akua
Williams, Ben
Williams, Beverly
Williams, Bryan
Williams, Curtis J.
Williams, Dollye Y.
Williams, Doris F.
Williams, Glen A.
Williams, Harold S.
Williams, Izola B.
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Wilson, Dorothy Y.
Wilson, Marjorie G.
Wilson, Veronica D.
Wilson, Victoria E.
Wilson, Virginia L.

Wilson-Bradley, Jacqueline
Wilt, Steven M.
Wilton, Amber C.
Winbush Sylvers, Queen Esther
Winter-Neighbors, Gwen W.
Winters, Leslie
Wolf, Sharon D.
Wolfe, Gerard R.
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Wong, Yue Mee
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Wooten, Herman E.
Worden, Carmen T.
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Worthington, Susan E.
Wright 3rd., James E.
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Yamauchi, Jeff S.
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Yu, Stephen
Zabala, Anidia G.
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Zaragoza, Samantha M.
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Zeller, Geoffrey
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Zuniga, Hector
Zupan, Kathy A.
Zurlo, April L.
Zuza Jr., Benjamin E.